S.B.CRIMINAL MISC. PETITION NO.254/2007
(Vishal Vs. State of Raj.)

Date of order : : 16.04.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.S.K.Poonia]
Mr.Sanjay Mathur], for the petitioner.
Mr.Ashok Upadhyay, PP for the State.

Heard learned counsel for the petitioner as well as learned Public Prosecutor.

Learned Additional Sessions Judge (Fast Track) No.1, Jodhpur while passing the judgment in criminal Sessions Case No.44/2006 has come to the conclusion that witness Vishal (the present petitioner) should be prosecuted under Section 193 IPC and after going the provision under Section 340(3)(b) Cr.P.C. (Amended Provision), he has directed the Public Prosecutor to file complaint against the petitioner under Section 193 I.P.C.

Learned counsel for the petitioner states that it has specifically mentioned in the provision of Section 340 Cr.P.C. that

if a court is of the opinion that any offence under Section 193 IPC has been committed it shall record finding to that effect hold a preliminary inquiry and the Presiding Officer of the court shall present a complaint before the competent court having jurisdiction. But learned Additional Sessions Judge has not considered the provision under Section 340(1) and (2) in true perspective. Offence under Section 193 IPC falls under Section 195 (1) (b) and for this purpose, a preliminary inquiry was necessary but this witness was never heard nor he has given any opportunity to be heard nor procedure under Section 340 Cr.P.C. was followed by learned Additional Sessions Judge and he has directly jumped and ordered the learned Public Prosecutor to file a complaint under Section 193 IPC against the petitioner.

Learned Public Prosecutor agrees that proceedings under Section 340 Cr.P.C. has not been followed by the learned Additional Sessions Judge.

I have considered the submission advanced by learned counsel for the parties and gone through the provision of Section 340 IPC which runs as follows:-

"340. **Procedure in cases mentioned in Section 195. -** (1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry,if any, as it thinks necessary,-

(a) record a finding to that effect;
(b) make a complaint thereof in writing;
(c) send it to a Magistrate of the first class having jurisdiction;
(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and
(e) bind over any person to appear and give evidence before such Magistrate.

(2)The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf."

From perusal of the said provision, it is clear that when an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to under Section 195 (1)(b), which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, court after preliminary inquiry, if any, as it thinks necessary record a finding to that effect; make a complaint thereof in writing; send it to a Magistrate of the first class having jurisdiction; take sufficient security for the appearance of the accused. But in the present case, no inquiry under Section 340 Cr.P.C. was conducted by learned Additional Sessions Judge nor any notice was given to the petitioner and learned lower court has directed the learned Public Prosecutor to file the complaint against the petitioner under Section 193 IPC. Since the said offence falls under the provision of Section 195(1)(b), it is mandatory on the part of the Magistrate to reach on the finding whether it is expedient in the interest of justice to proceed under law. Secondly it must follow the procedure according to law under the provision of Section 340 Cr.P.C.. It has also been contended by learned counsel for the petitioner that no offence under Section 193 IPC is made out

against the petitioner. At this stage, I do not want to comment on the merit of the case whether offence under Section 193 IPC is made or not against the petitioner, however, since the learned Additional Sessions Judge has passed the order directing the Public Prosecutor to file complaint against the petitioner without following procedure under Section 340 Cr.P.C., therefore, it is bad in eye of law and same is liable to be quashed.

For the reasons mentioned above, this misc. petition is allowed and the order dtd. 20.1.2007 passed by learned Additional Sessions Judge (Fast Track) No.1, Jodhpur directing the Public Prosecutor to file a complaint under Section 193 IPC against the petitioner is set aside.

(KRISHAN KUMAR ACHARYA), J.

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